

**Sent:** 8/19/2016 10:44:01 PM  
**To:** Bray, Dave [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3581998cbde488fa426f7a5227cb914-Bray, Dave]; McClintock, Katie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2d5346d5556d4911a85e6ac0501c65db-McClintock, Katie]  
**CC:** Leefers, Kristin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a465d42c1e084f05856076e49e69e035-Leefers, Kristin F.]  
**Subject:** RE: call with Bullseye's attorney (Enforcement Sensitive)

### § 63.1 Applicability

**(b) Initial applicability determination for this part.**

**(1)** The provisions of this part apply to the owner or operator of any stationary source that -

**(i)** Emits or has the potential to emit any hazardous air pollutant listed in or pursuant to section 112(b) of the Act; and

**(ii)** Is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to this part.

**(2)** [Reserved]

**(3)** An owner or operator of a stationary source who is in the relevant source category and who determines that the source is not subject to a relevant standard or other requirement established under this part must keep a record as specified in § 63.10(b)(3).

### §63.10 Recordkeeping and reporting requirements

**(b)(3) Recordkeeping requirement for applicability determinations.** If an owner or operator determines that his or her stationary source that emits (or has the potential to emit, without considering controls) one or more hazardous air pollutants regulated by any standard established pursuant to section 112(d) or (f), and that stationary source is in the source category regulated by the relevant standard, but that source is not subject to the relevant standard (or other requirement established under this part) because of limitations on the source's potential to emit or an exclusion, the owner or operator must keep a record of the applicability determination on site at the source for a period of 5 years after the determination, or until the source changes its operations to become an affected source, whichever comes first. The record of the applicability determination must be signed by the person making the determination and include an analysis (or other information) that demonstrates why the owner or operator believes the source is unaffected (e.g., because the source is an area source). The analysis (or other information) must be sufficiently detailed to allow the Administrator to make a finding about the source's applicability status with regard to the relevant standard or other requirement. If relevant, the analysis must be performed in accordance with requirements established in relevant subparts of this part for this purpose for particular categories of stationary sources. If relevant, the analysis should be performed in accordance with EPA guidance materials published to assist sources in making applicability determinations under section 112, if any. The requirements to determine applicability of a standard under §63.1(b)(3) and to record the results of that determination under paragraph (b)(3) of this section shall not by themselves create an obligation for the owner or operator to obtain a title V permit.

### §63.9 Notification requirements.

**(b) Initial notifications.** **(1)(i)** The requirements of this paragraph apply to the owner or operator of an affected source when such source becomes subject to a relevant standard.

**(ii)** If an area source that otherwise would be subject to an emission standard or other requirement established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard or other requirement, such source shall be subject to the notification requirements of this section.

**(iii)** Affected sources that are required under this paragraph to submit an initial notification may use the application for approval of construction or reconstruction under §63.5(d) of this subpart, if relevant, to fulfill the initial notification requirements of this paragraph.

(2) The owner or operator of an affected source that has an initial startup before the effective date of a relevant standard under this part shall notify the Administrator in writing that the source is subject to the relevant standard. The notification, which shall be submitted not later than 120 calendar days after the effective date of the relevant standard (or within 120 calendar days after the source becomes subject to the relevant standard), shall provide the following information:

- (i) The name and address of the owner or operator;
- (ii) The address (i.e., physical location) of the affected source;
- (iii) An identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date;
- (iv) A brief description of the nature, size, design, and method of operation of the source and an identification of the types of emission points within the affected source subject to the relevant standard and types of hazardous air pollutants emitted; and
- (v) A statement of whether the affected source is a major source or an area source.

#### **§ 63.11448 Am I subject to this subpart?**

You are subject to this subpart if you own or operate a glass manufacturing facility that is an area source of hazardous air pollutant (HAP) emissions and meets all of the criteria specified in paragraphs (a) through (c) of this section.

**(a)** A glass manufacturing facility is a plant site that manufactures flat glass, glass containers, or pressed and blown glass by melting a mixture of raw materials, as defined in § 63.11459, to produce molten glass and form the molten glass into sheets, containers, or other shapes.

**(b)** An area source of HAP emissions is any stationary source or group of stationary sources within a contiguous area under common control that does not have the potential to emit any single HAP at a rate of 9.07 megagrams per year (Mg/yr) (10 tons per year (tpy)) or more and any combination of HAP at a rate of 22.68 Mg/yr (25 tpy) or more.

**(c)** Your glass manufacturing facility uses one or more continuous furnaces to produce glass that contains compounds of one or more glass manufacturing metal HAP, as defined in § 63.11459, as raw materials in a glass manufacturing batch formulation.

#### **§63.11459 What definitions apply to this subpart?**

*Continuous furnace* means a glass manufacturing furnace that operates continuously except during periods of maintenance, malfunction, control device installation, reconstruction, or rebuilding.

*Cullet* means recycled glass that is mixed with raw materials and charged to a glass melting furnace to produce glass. Cullet is not considered to be a raw material for the purposes of this subpart.

*Glass manufacturing metal HAP* means an oxide or other compound of any of the following metals included in the list of urban HAP for the Integrated Urban Air Toxics Strategy and for which Glass Manufacturing was listed as an area source category: arsenic, cadmium, chromium, lead, manganese, and nickel.

*Glass melting furnace* means a unit comprising a refractory-lined vessel in which raw materials are charged and melted at high temperature to produce molten glass.

*Raw material* means minerals, such as silica sand, limestone, and dolomite; inorganic chemical compounds, such as soda ash (sodium carbonate), salt cake (sodium sulfate), and potash (potassium carbonate); metal oxides and other metal-based compounds, such as lead oxide, chromium oxide, and sodium antimonate; metal ores, such as chromite and pyrolusite; and other substances that are intentionally added to a glass manufacturing batch and melted in a glass melting furnace to produce glass. Metals that are naturally-occurring trace constituents or contaminants of other substances are not considered to be raw materials. Cullet and material that is recovered from a furnace control device for recycling into the glass formulation are not considered to be raw materials for the purposes of this subpart.

Senior Air Toxics Advisor

[Narvaez.madonna@epa.gov](mailto:Narvaez.madonna@epa.gov)

US Environmental Protection Agency

1200 Sixth Avenue, Suite 900  
MC: OAW-150  
Seattle, WA 98101  
206.553.2117

U.S. EPA Region 10 (@EPAnorthwest) | Twitter  
<https://twitter.com/EPAnorthwest>

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**From:** Bray, Dave  
**Sent:** Wednesday, August 17, 2016 1:30 PM  
**To:** McClintock, Katie <McClintock.Katie@epa.gov>  
**Cc:** Narvaez, Madonna <Narvaez.Madonna@epa.gov>; Leefers, Kristin <Leefers.Kristin@epa.gov>  
**Subject:** RE: call with Bullseye's attorney (Enforcement Sensitive)

**Deliberative Process / Attorney-Client Privilege / Ex. 5**

Dave

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**From:** McClintock, Katie  
**Sent:** Wednesday, August 17, 2016 1:16 PM  
**To:** Bray, Dave <Bray.Dave@epa.gov>  
**Cc:** Narvaez, Madonna <Narvaez.Madonna@epa.gov>; Leefers, Kristin <Leefers.Kristin@epa.gov>  
**Subject:** Re: call with Bullseye's attorney (Enforcement Sensitive)

**Deliberative Process / Attorney-Client Privilege / Ex. 5**

Sent from my iPhone

On Aug 16, 2016, at 5:00 PM, Bray, Dave <Bray.Dave@epa.gov> wrote:

**Deliberative Process / Attorney-Client Privilege / Ex. 5**

Dave

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**From:** Narvaez, Madonna  
**Sent:** Tuesday, August 16, 2016 4:10 PM  
**To:** McClintock, Katie <McClintock.Katie@epa.gov>  
**Cc:** Leefers, Kristin <Leefers.Kristin@epa.gov>; Bray, Dave <Bray.Dave@epa.gov>  
**Subject:** RE: call with Bullseye's attorney (Enforcement Sensitive)

Dave, should we get that from Scott Throwe? Or do you have a list?

Senior Air Toxics Advisor  
[Narvaez.madonna@epa.gov](mailto:Narvaez.madonna@epa.gov)  
US Environmental Protection Agency  
1200 Sixth Avenue, Suite 900  
MC: OAW-150  
Seattle, WA 98101  
206.553.2117

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<https://twitter.com/EPAnorthwest>

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**From:** McClintock, Katie  
**Sent:** Tuesday, August 16, 2016 3:51 PM  
**To:** Narvaez, Madonna <Narvaez.Madonna@epa.gov>  
**Cc:** Leefers, Kristin <Leefers.Kristin@epa.gov>  
**Subject:** Fwd: call with Bullseye's attorney (Enforcement Sensitive)

Do you have guidance handy for what someone needs to send in?

Sent from my iPhone

Begin forwarded message:

**From:** "Throwe, Scott" <Throwe.Scott@epa.gov>  
**Date:** August 16, 2016 at 11:48:19 AM PDT  
**To:** "Leefers, Kristin" <Leefers.Kristin@epa.gov>, "McClintock, Katie" <McClintock.Katie@epa.gov>, "Messina, Edward" <Messina.Edward@epa.gov>, "Averback, Jonathan" <Averback.Jonathan@epa.gov>, "Koerber, Mike" <Koerber.Mike@epa.gov>, "Fairchild, Susan" <Fairchild.Susan@epa.gov>, "Barnett, Keith" <Barnett.Keith@epa.gov>, "Yellin, Patrick" <Yellin.Patrick@epa.gov>, "Fried, Gregory" <Fried.Gregory@epa.gov>, "Froikin, Sara" <Froikin.Sara@epa.gov>, "Narvaez, Madonna" <Narvaez.Madonna@epa.gov>, "Bray, Dave" <Bray.Dave@epa.gov>, "Klaus, Dan" <Klaus.Dan@epa.gov>  
**Subject:** RE: call with Bullseye's attorney (Enforcement Sensitive)

Kristen: Thanks for the update from your discussion with Bullseye's attorney. We are

**Deliberative Process / Attorney-Client Privilege / Ex. 5**

## Deliberative Process / Attorney-Client Privilege / Ex. 5

Scott Throwe  
U.S. EPA  
Office of Enforcement and Compliance Assurance  
Office of Compliance  
Phone: 202-564-7013

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**From:** Leefers, Kristin

**Sent:** Monday, August 15, 2016 5:42 PM

**To:** McClintock, Katie <McClintock.Katie@epa.gov>; Throwe, Scott <Throwe.Scott@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Averback, Jonathan <Averback.Jonathan@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Fairchild, Susan <Fairchild.Susan@epa.gov>; Barnett, Keith <Barnett.Keith@epa.gov>; Yellin, Patrick <Yellin.Patrick@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>; Froikin, Sara <Froikin.Sara@epa.gov>; Narvaez, Madonna <Narvaez.Madonna@epa.gov>; Bray, Dave <Bray.Dave@epa.gov>

**Subject:** call with Bullseye's attorney

Hi All-

I wanted to update you on my conversation with Bullseye's attorney today (8/15). The three main points Bullseye wanted to get across to EPA are as follows.

1. Bullseye wants an applicability determination and wants to know specifically what information to submit to EPA. Even if the determination has the same result as the guidance, Bullseye wants to know. While the state rule may be more strict regarding on-the-ground control measures, Bullseye thinks that other NESHAP requirements (especially reporting/notifications/permit applications) contain additional requirements that would not be necessary if 6S does not apply to Bullseye.
2. Bullseye is concerned about potential EPA or state enforcement action for past violations of 6S. The agreement with the state requires Bullseye to come into compliance with 6S and the state rule by September 1, which includes submitting notification to the state and applying for a Title V permit. Bullseye is worried that it will face enforcement for failing to meet certain NESHAP deadlines, for example sending in a notification in 2016 when the due date according to the NESHAP was in 2007. Basically they are asking for a no-action assurance from EPA.
3. Bullseye wants a level playing field across the country and is concerned that other facilities are not being held to the 6S standards. Bullseye would like EPA to

start the rulemaking process or issue some form of guidance that can be applied nationwide to describe what “continuous” means, and who is subject to 6S.

## **Deliberative Process / Attorney Client / Ex. 5**

Please forward this to anyone I may have missed. Also, I will not be on the call tomorrow (for those of you on the regularly-scheduled call) because I’ll be out of the office. I’m back on Wednesday.

Thanks,  
Kris

Kris Leefers  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900  
M/S: ORC-113  
Seattle, Washington 98101  
206-553-1532  
[leefers.kristin@epa.gov](mailto:leefers.kristin@epa.gov)

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